

### **REMARKS**

Claims 1, 3-11, and 13-30 are pending. Claims 1, 3-9, and 11 are rejected. Objected to are claims 13-26. Claims 1, 8, 9, 11 and 19 have been amended. No new matter has been added.

Importantly, any claim amendments and/or cancellations made herein should not be construed to be an acquiescence to any of the claim rejections. Rather, these actions are being made solely to expedite the prosecution of the above-identified application. The Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application (35 USC § 120).

### **CLAIM OBJECTIONS**

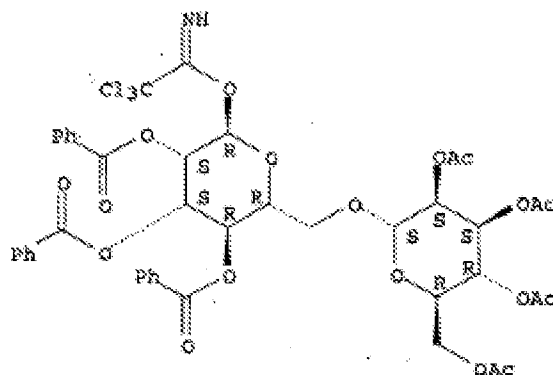
The Examiner has objected to claims 1 and 19 because of informalities in the phrase or symbol. Claims 1 and 19 have been amended to address the Examiner's objections. Specifically, the claims have been amended to remove one  $\text{Li}^+$  from claims 1 and 19. Therefore, the Applicants respectfully request the Examiner withdraw his objections to claims 1 and 19.

### **CLAIM REJECTIONS BASED ON 35 USC § 102(b)**

The Examiner has rejected claims 1, 4-6, 8 and 9 as being anticipated by Jaworek *et al.* (*Carbohydrate Res.* **2001**, 331, 375-391). Specifically, the Examiner asserts that Jaworek on page 376 (compound **3**) teaches a compound which falls within the scope of formula **I** wherein n is 1, R is H,  $\text{R}^1$  and  $\text{R}^2$  taken together are  $\text{P}(\text{O})\text{OH}$ ,  $\text{R}^3$  is amino, and  $\text{R}^4$  is H. The Applicants respectfully traverse.

In addition, the Examiner has rejected claims 1, 3-5, 8, and 9 as being anticipated by Martin-Lomas *et al.* (*Chem. Eur. J.* **2000**, 6(19), 3608-3612). Specifically, the Examiner asserts that Martin-Lomas on page 3609 (compound **2**) teaches a compound which falls within the scope of formula **I** wherein n is 3, R is H,  $\text{R}^1$  and  $\text{R}^2$  taken together is  $\text{P}(\text{O})\text{OH}$ ,  $\text{R}^3$  is amino, and  $\text{R}^4$  is H. The Applicants respectfully traverse.

Lastly, the Examiner has rejected claim 11 as being anticipated by Kong *et al.* (CN 1297892, abstract only). The abstract of the Kong patent, which was provided by the Examiner, contained one compound as shown below:



The Examiner asserts that this compound which falls within the scope of claim 11. The Applicants respectfully traverse.

To anticipate a claim under §102(b), a reference must teach each and every element of the claim, either expressly or inherently. M.P.E.P. § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union oil Co. of California*, 8144. F. 2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

Solely to expedite the prosecution of this application, the Applicants have amended independent claim 1 and dependant claims 8 and 9, so that R<sup>4</sup> can not be H. Amendments to claim 11 made in the previous Office Action limit n to be 3 or 4. As the compounds cited by the Examiner do not fall within the scope of the amended claims, the cited art is thus not anticipatory. Therefore, the Applicants respectfully request the Examiner withdraw his rejections of claim 1, 3-6, 8, 9 and 11 under 35 USC § 102(b) based on Jaworek, Martin-Lomas, and Kong.

**CLAIM REJECTIONS BASED ON 35 USC § 103(a)**

The Examiner has rejected claim 7 as being unpatentable over Jaworek *et al.* (*Carbohydrate Res.* **2001**, 331, 375-391). The Examiner asserts that the difference between the claimed compounds and the compound taught by Jaworek is that the claimed compounds are the ammonium halide salts. The Applicants respectfully traverse.

In support of their analysis, the Applicants respectfully remind the Examiner that in order to form the basis of a proper rejection under 35 U.S.C. § 103(a), the reference or references must teach all of the limitations of the claim. *See In re Zurko*, 111 F.3d 887, 888-889, 42 U.S.P.Q. 2d 1476, 1478 (Fed. Cir. 1997); and *MPEP 2143.03* (“[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981.”). In addition, if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); and *MPEP 2143.03*.

As mentioned above, claim 1 has been amended so that the Jaworek compound cited by the Examiner does not fall within the scope of the amended claim. Therefore, Jaworek alone does not teach all of the limitations of independent claim 1, nor does its dependent claims (e.g. claim 7). Accordingly, the Applicants respectfully request the withdrawal of the rejection under of claim 7 under 35 U.S.C. § 103(a) based upon Jaworek.

**ALLOWABLE SUBJECT MATTER**

The Applicants note with appreciation that the Examiner has indicating that claims 10 and 13-18 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 19-26 would be allowable provided all objections are overcome. Claims 27-30 would be allowable over the publications and patents cited by the Examiner.

**FEES**

The Applicants believe there are no additional fees required in connection with the filing of this paper. Nevertheless, the Director is hereby authorized to charge any additional required fee to our Deposit Account, **06-1448**, Reference **MTV-055.01**.

**CONCLUSION**

In view of the above remarks, it is believed that the pending claims are in condition for allowance. The Applicants respectfully request reconsideration and withdrawal of the pending rejections. The Applicants thank the Examiner for careful consideration of the present case. If a telephone conversation with the Applicants' Agent would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Patent Group  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, MA 02210  
617-832-1000  
617-832-7000 (FAX)

Respectfully submitted,  
FOLEY HOAG LLP

/Jacob I. Wasserman/  
Jacob I. Wasserman, Ph.D.  
Agent for Applicants  
Registration No. 56,929

Date: June 26, 2008